## SUBTITLE J — COAL INDUSTRY HEALTH BENEFITS

Chapter
99. Coal industry health benefits.

## CHAPTER 99 — COAL INDUSTRY HEALTH BENEFITS

**Subchapter**

A. Definitions of general applicability.
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**Subchapter**

C. Health benefits of certain miners.
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## SUBCHAPTER A — DEFINITIONS OF GENERAL APPLICABILITY

Sec.
9701. Definitions of general applicability

### § 9701. Definition of general applicability

**(a) Plans and funds.** — For purposes of this chapter —

**(1) UMWA Benefit Plan. —**

**(A) In General.** — The term ''UMWA Benefit Plan'' means a plan —

**(i)** which is described in section 404(c), or a continuation thereof; and

**(ii)** which provides health benefits to retirees and beneficiaries of the industry which maintained the 1950 UMWA Pension Plan.

(B) **1950 UMWA Benefit Plan.** — The term ''1950 UMWA Benefit Plan'' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired before 1976.

(C) **1974 UMWA Benefit Plan.** — The term ''1974 UMWA Benefit Plan'' means a UMWA Benefit Plan, participation in which is substantially limited to individuals who retired on or after January 1, 1976.

(2) **1950 UMWA Pension Plan.** — The term ''1950 UMWA Pension Plan'' means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired before 1976.

(3) **1974 UMWA Pension Plan.** — The term ''1974 UMWA Pension Plan'' means a pension plan described in section 404(c) (or a continuation thereof), participation in which is substantially limited to individuals who retired in 1976 and thereafter.

(4) **1992 UMWA Benefit Plan.** — The term ''1992 UMWA Benefit Plan'' means the plan referred to in section 9713A.

(5) **Combined fund.** — The term ''Combined Fund'' means the United Mine Workers of America Combined Benefit Fund established under section 9702.

(b) **Agreements.** — For purposes of this section —

(1) **Coal wage agreement.** — The term ''coal wage agreement'' means —

(A) the National Bituminous Coal Wage Agreement, or

(B) any other agreement entered into between an employer in the coal industry and the United Mine Workers of America that required or requires one or both of the following:

(i) the provision of health benefits to retirees of such employer, eligibility for which is based on years of service credited under a plan established by the settlors and described in section 404(c) or a continuation of such plan; or

(ii) contributions to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or any predecessor thereof.

(2) **Settlors.** — The term ''settlors'' means the United Mine Workers of America and the Bituminous Coal Operators' Association, Inc. (referred to in this chapter as the ''BCOA'').

(3) **National Bituminous Coal Wage Agreement.** — The term ''National Bituminous Coal Wage Agreement'' means a collective bargaining agreement negotiated by the BCOA and the United Mine Workers of America.

(c) **Terms relating to operators.** — For purposes of this section —

(1) **Signatory operator.** — The term ''signatory operator'' means a person which is or was a signatory to a coal wage agreement.

(2) **Related persons.** —

(A) **In general.** — A person shall be considered to be a related person to a signatory operator if that person is —

(i) a member of the controlled group of corporations (within the meaning of section 52(a)) which includes such signatory operator;

(ii) a trade or business which is under common control (as determined under section 52(b)) with such signatory operator; or

(iii) any other person who is identified as having a partnership interest or joint venture with a signatory operator in a business within the coal industry, but only if such business employed eligible beneficiaries, except that this clause shall not apply to a person whose only interest is as a limited partner.

A related person shall also include a successor in interest of any person described in clause (i), (ii), or (iii).

(B) **Time for determination.** — The relationships described in clauses (i), (ii), and (iii) of subparagraph (A) shall be determined as of July

20, 1992, except that if, on July 20, 1992, a signatory operator is no longer in business, the relationships shall be determined as of the time immediately before such operator ceased to be in business.

(3) **1988 agreement operator.**—The term ''1988 agreement operator'' means—

(A) a signatory operator which was a signatory to the 1988 National Bituminous Coal Wage Agreement,

(B) an employer in the coal industry which was a signatory to an agreement containing pension and health care contribution and benefit provisions which are the same as those contained in the 1988 National Bituminous Coal Wage Agreement, or

(C) an employer from which contributions were actually received after 1987 and before July 20, 1992, by the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan in connection with employment in the coal industry during the period covered by the 1988 National Bituminous Coal Wage Agreement.

(4) **Last signatory operator.**—The term ''last signatory operator'' means, with respect to a coal industry retiree, a signatory operator which was the most recent coal industry employer of such retiree.

(5) **Assigned operator.**—The term ''assigned operator'' means, with respect to an eligible beneficiary

defined in section 9703(f), the signatory operator to which liability under subchapter B with respect to the beneficiary is assigned under section 9706.

(6) **Operators of dependent beneficiaries.** — For purposes of this chapter, the signatory operator, last signatory operator, or assigned operator of any eligible beneficiary under this chapter who is a coal industry retiree shall be considered to be the signatory operator, last signatory operator, or assigned operator with respect to any other individual who is an eligible beneficiary under this chapter by reason of a relationship to the retiree.

(7) **Business.** — For purposes of this chapter, a person shall be considered to be in business if such person conducts or derives revenue from any business activity, whether or not in the coal industry.

(d) **Enactment date.** — For purposes of this chapter, the term ''enactment date'' means the date of the enactment of this chapter.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3037.)

## HISTORICAL AND STATUTORY NOTES

### Revision Notes and Legislative Reports

**1992 Acts.** House Report No. 102-474 (I-IX) and House Conference Report No. 102-1018, see 1992 U.S. Code Cong. and Adm. News, p. 1953.

### References in Text

The date of the enactment of this chapter, referred to in subsec. (d), means the date of the enactment of Pub. L. 102-486, which was approved Oct. 24, 1992.

### Findings and Declaration of Policy

Section 19142 of Pub. L. 102-486 provided that:

"**(a) Findings.** — The Congress finds that —

"(1) the production, transportation and use of coal substantially affects interstate and foreign commerce and the national public interest; and

"(2) in order to secure the stability of interstate commerce, it is necessary to modify the current private health care benefit plan structure for retirees in the coal industry to identify persons most responsible for plan liabilities in order to stabilize plan funding and allow for the provision of health care benefits to such retirees.

"**(b) Statement of policy.** — It is the policy of this subtitle [enacting this subtitle, amending section 1231 and 1232 of Title 30, Mineral Lands and Mining, and enacting this note] —

"(1) to remedy problems with the provision and funding of health care benefits with respect to the beneficiaries of

multiemployer benefit plans that provide health care benefits to retirees in the coal industry;

''(2) to allow for sufficient operating assets for such plans; and

''(3) to provide for the continuation of a privately financed self-sufficient program for the delivery of health care benefits to the beneficiaries of such plans.''

## SUBCHAPTER B — COMBINED BENEFIT FUND


| Part | | Part | |
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| I. | Establishment and Benefits. | III. | Enforcement. |
| II. | Financing. | IV. | Other Provisions. |


### PART I — ESTABLISHMENT AND BENEFITS


Sec.

9702. Establishment of the United Mine Workers of America Combined Benefits Fund.

9703. Plan Benefits.


### § 9702. Establishment of the United Mine Workers of America Combined Benefit Fund

**(a) Establishment. —**

**(1) In General.** — As soon as practicable (but not later than 60 days) after the enactment date, the persons described in subsection (b) shall designate the individuals to serve as trustees. Such trustees shall create a new private plan to be known as the United Mine Workers of America Combined Benefit Fund.

**(2) Merger of retiree benefit plans.** — As of February 1, 1993, the settlors of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall cause such plans to be merged into the Combined Fund, and such merger shall not be treated as an employer withdrawal for purposes of any 1988 coal wage agreement.

(3) **Treatment of plan.** — The Combined Fund shall be —

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(4) **Tax treatment.** — For purposes of this title, the Combined Fund and any related trust shall be treated as an organization exempt from tax under section 501(a).

(b) **Board of trustees.** —

(1) **In general.** — For purposes of subsection (a), the board of trustees for the Combined Fund shall be appointed as follows:

(A) one individual who represents employers in the coal mining industry shall be designated by the BCOA;

(B) one individual shall be designated by the three employers, other than 1988 agreement operators, who have been assigned the greatest number of eligible beneficiaries under section 9706;

(C) two individuals designated by the United Mine Workers of America; and

(D) three persons selected by the persons appointed under subparagraphs (A), (B), and (C).

(2) **Successor trustees.** — Any successor trustee shall be appointed in the same manner as the trustee being succeeded. The plan establishing the Combined Fund shall provide for the removal of trustees.

(3) **Special rules.** —

(A) **BCOA.** — If the BCOA ceases to exist, any trustee or successor under paragraph (1)(A) shall be designated by the 3 employers who were members of the BCOA on the enactment date and who have been assigned the greatest number of eligible beneficiaries under section 9706.

(B) **Former Signatories.** — The initial trustee under paragraph (1)(B) shall be designated by the 3 employers, other than 1988 agreement operators, which the records of the 1950 UMWA Benefit Plan and 1974 UMWA Benefit Plan indicate have the greatest number of eligible beneficiaries as of the enactment date, and such trustee and any successor shall serve until November 1, 1993.

(c) **Plan year.** — The first plan year of the Combined Fund shall begin February 1, 1993, and end September 30,

1993. Each succeeding plan year shall begin on October 1 of each calendar year.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3040.)

**§ 9703. Plan benefits**

**(a) In General.** — Each eligible beneficiary of the Combined Fund shall receive —

**(1)** health benefits described in subsection (b), and

**(2)** in the case of an eligible beneficiary described in subsection (f)(1), death benefits coverage described in subsection (c).

**(b) Health benefits.** —

**(1) In general.** — The trustees of the Combined Fund shall provide health care benefits to each eligible beneficiary by enrolling the beneficiary in a health care services plan which undertakes to provide such benefits on a prepaid risk basis. The trustees shall utilize all available plan resources to ensure that, consistent with paragraph (2), coverage under the managed care system shall to the maximum extent feasible be substantially the same as (and subject to the same limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

**(2) Plan payment rates.** —

(A) **In general.** — The trustees of the Combined Fund shall negotiate payment rates with the health care services plans described in paragraph (1) for each plan year which are in amounts which —

(i) vary as necessary to ensure that beneficiaries in different geographic areas have access to a uniform level of health benefits; and

(ii) result in aggregate payments for such plan year from the Combined Fund which do not exceed the total premium payments required to be paid to the Combined Fund under section 9704(a) for the plan year, adjusted as provided in subparagraphs (B) and (C).

(B) **Reductions.** — The amount determined under subparagraph (A)(ii) for any plan year shall be reduced —

(i) by the aggregate death benefit premiums determined under section 9704(c) for the plan year, and

(ii) by the amount reserved for plan administration under subsection (d).

(C) **Increases.** —The amount determined under subparagraph (A)(ii) shall be increased —

(i) by any reduction in the total premium payments required to be paid under

section 9704(a) by reason of transfers described in section 9705,

(ii) by any carryover to the plan year from any preceding plan year which —

(I) is derived from amounts described in section 9704(e)(3)(B)(i), and

(II) the trustees elect to use to pay benefits for the current plan year, and

(iii) any interest earned by the Combined Fund which the trustees elect to use to pay benefits for the current plan year.

(3) **Qualified providers.** — The trustees of the Combined Fund shall not enter into an agreement under paragraph (1) with any provider of services which is of a type which is required to be certified by the Secretary of Health and Human Services when providing services under title XVIII of the Social Security Act unless the provider is so certified.

(4) **Effective date.** — Benefits shall be provided under paragraph (1) on and after February 1, 1993.

(c) **Death benefits coverage.** —

(1) **In general.** — The trustees of the Combined Fund shall provide death benefits coverage to each eligible beneficiary described in subsection (f)(1) which is identical to the benefits provided under the 1950 UMWA Pension Plan or 1974 UMWA Pension

Plan, whichever is applicable, on July 20, 1992. Such coverage shall be provided on and after February 1, 1993.

(2) **Termination of coverage.**—The 1950 UMWA Pension Plan and the 1974 UMWA Pension Plan shall each be amended to provide that death benefits coverage shall not be provided to eligible beneficiaries on and after February 1, 1993. This paragraph shall not prohibit such plans from subsequently providing death benefits not described in paragraph (1).

(d) **Reserves for administration.**—The trustees of the Combined Fund may reserve for each plan year, for use in payment of the administrative costs of the Combined Fund, an amount not to exceed 5 percent of the premiums to be paid to the Combined Fund under section 9704(a) during the plan year.

(e) **Limitation on enrollment.**—The Combined Fund shall not enroll any individual who is not receiving benefits under the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of July 20, 1992.

(f) **Eligible beneficiary.**—For purposes of this subchapter, the term ''eligible beneficiary'' means an individual who—

(1) is a coal industry retiree who, on July 20, 1992, was eligible to receive, and receiving, benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, or

(2) on such date was eligible to receive, and receiving, benefits in either such plan by reason of a relationship to such retiree.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3041.)

PART II - FINANCING


| Sec. | | Sec. | |
|---|---|---|---|
| 9704. | Liability of assigned operators. | 9705. | Transfers. |
| | | 9706. | Assignment of eligible beneficiaries. |


**§ 9704. Liability of assigned operators**

(a) **Annual premiums.** — Each assigned operator shall pay to the Combined Fund for each plan year beginning on or after February 1, 1993, an annual premium equal to the sum of the following three premiums —

(1) the health benefit premium determined under subsection (b) for such plan year, plus

(2) the death benefit premium determined under subsection (c) for such plan year, plus

(3) the unassigned beneficiaries premium determined under subsection (d) for such plan year.

Any related person with respect to an assigned operator shall be jointly and severally liable for any premium required to be paid by such operator.

(b) **Health benefit premium.** — For purposes of this chapter —

(1) **In general.** — The health benefit premium for any plan year for any assigned operator shall be an amount equal to the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries assigned to such operator under section 9706.

(2) **Per beneficiary premium.** — The Secretary of Health and Human Services shall calculate a per beneficiary premium for each plan year beginning on or after February 1, 1993, which is equal to the sum of —

(A) the amount determined by dividing —

(i) the aggregate amount of payments from the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for health benefits (less reimbursements but including administrative costs) for the plan year beginning July 1, 1991, for all individuals covered under such plans for such plan year, by

(ii) the number of such individuals, plus

(B) the amount determined under subparagraph (A) multiplied by the percentage (if any) by which the medical component of the Consumer Price Index for the calendar year in which the plan year begins exceeds such component for 1992.

(3) **Adjustments for medicare reductions.** — If, by reason of a reduction in benefits under title XVIII of the Social Security Act, the level of health benefits under the Combined Fund would be reduced, the trustees of the Combined Fund shall increase the per beneficiary premium for the plan year in which the reduction occurs and each subsequent plan year by the amount necessary to maintain the level of health benefits which would have been provided without such reduction.

(c) **Death benefit premium.** — The death benefit premium for any plan year for any assigned operator shall be equal to the applicable percentage of the amount, actuarially determined, which the Combined Fund will be required to pay during the plan year for death benefits coverage described in section 9703(c).

(d) **Unassigned beneficiaries premium.** — The unassigned beneficiaries premium for any plan year for any assigned operator shall be equal to the applicable percentage of the product of the per beneficiary premium for the plan year multiplied by the number of eligible beneficiaries who are not assigned under section 9706 to any person for such plan year.

(e) **Premium accounts; adjustments.** —

(1) **Accounts.** — The trustees of the Combined Fund shall establish and maintain 3 separate accounts for each of the premiums described in subsections (b), (c), and (d). Such accounts shall be credited with the premiums received and debited with expenditures allocable to such premiums.

**(2) Allocations.** —

**(A) Administrative expenses.** — Administrative costs for any plan year shall be allocated to premium accounts under paragraph (1) on the basis of expenditures (other than administrative costs) from such accounts during the preceding plan year.

**(B) Interests.** — Interest shall be allocated to the account established for health benefit premiums.

**(3) Shortfalls and surpluses.** —

**(A) In general.** — Except as provided in subparagraph (B), if, for any plan year, there is a shortfall or surplus in any premium account, the premium for the following plan year for each assigned operator shall be proportionately reduced or increased, whichever is applicable, by the amount of such shortfall or surplus.

**(B) Exception.** — Subparagraph (A) shall not apply to any surplus in the health benefit premium account or the unassigned beneficiaries premium account which is attributable to —

**(i)** the excess of the premiums credited to such account for a plan year over the benefits (and administrative costs) debited to such account for the plan year, but such excess shall only be available for purposes of the carryover described in section 9703(b)(2)(C)(ii) (relating to carry-

overs of premiums not used to provide benefits), or

(ii) interest credited under paragraph (2)(B) for the plan year or any preceding plan year.

(C) **No authority for increased payments.** — Nothing in this paragraph shall be construed to allow expenditures for health care benefits for any plan year in excess of the limit under section 9703(b)(2).

(f) **Applicable percentage.** — For purposes of this section —

(1) **In general.** — The term ''applicable percentage'' means, with respect to any assigned operator, the percentage determined by dividing the number of eligible beneficiaries assigned under section 9706 to such operator by the total number of eligible beneficiaries assigned under section 9706 to all such operators (determined on the basis of assignments as of October 1, 1993).

(2) **Annual adjustments.** — In the case of any plan year beginning on or after October 1, 1994, the applicable percentage for any assigned operator shall be redetermined under paragraph (1) by making the following changes to the assignments as of October 1, 1993:

(A) Such assignments shall be modified to reflect any changes during the period beginning October 1, 1993, and ending on the last day of

the preceding plan year pursuant to the appeals process under section 9706(f).

**(B)** The total number of assigned eligible beneficiaries shall be reduced by the eligible beneficiaries of assigned operators which (and all related persons with respect to which) had ceased business (within the meaning of section 9701(c)(6)) during the period described in subparagraph (A).

**(g) Payment of premiums.—**

**(1) In general.**—The annual premium under subsection (a) for any plan year shall be payable in 12 equal monthly installments, due on the twenty-fifth day of each calendar month in the plan year. In the case of the plan year beginning February 1, 1993, the annual premium under subsection (a) shall be added to such premium for the plan year beginning October 1, 1993.

**(2) Deductibility.**—Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

**(h) Information.**—The trustees of the Combined Fund shall, not later than 60 days after the enactment date, furnish to the Secretary of Health and Human Services information as to the benefits and covered beneficiaries under the fund, and such other information as the Secretary may require to compute any premium under this section.

**(i) Transition rules.—**

**(1) 1988 Agreement Operators.—**

**(A) 1st year costs.**—During the plan year of the Combined Fund beginning February 1, 1993, the 1988 agreement operators shall make contributions to the Combined Fund in amounts necessary to pay benefits and administrative costs of the Combined Fund incurred during such year, reduced by the amount transferred to the Combined Fund under section 9705(a) on February 1, 1993.

**(B) Deficits from merged plans.**—During the period beginning February 1, 1993, and ending September 30, 1994, the 1988 agreement operators shall make contributions to the Combined Fund as are necessary to pay off the expenses accrued (and remaining unpaid) by the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, reduced by the assets of such plans as of such date.

**(C) Failure.**—If any 1988 agreement operator fails to meet any obligation under this paragraph, any contributions of such operator to the Combined Fund or any other plan described in section 404(c) shall not be deductible under this title until such time as the failure is corrected.

**(D) Premium reductions.** —

**(i) 1st year payments.** — In the case of a 1988 agreement operator making contributions under subparagraph (A), the premium of such operator under subsection (a) shall be reduced by the amount paid under subparagraph (A) by such operator for the plan year beginning February 1, 1993.

**(ii) Deficit payments.** — In the case of a 1988 agreement operator making contributions under subparagraph (B), the premium of such operator under subsection (a) shall be reduced by the amounts which are paid to the Combined Fund by reason of claims arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims based on the ''evergreen clause'' found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan, and which are allocated to such operator under subparagraph (E).

**(iii) Limitation.** — Clause (ii) shall not apply to the extent the amounts paid exceed the contributions.

**(iv) Plan years.** — Premiums under subsection (a) shall be reduced for the first plan year for which amounts described in clause (i) or (ii) are available and for any

succeeding plan year until such amounts are exhausted.

(E) **Allocations of contributions and refunds.** — Contributions under subparagraphs (A) and (B), and premium reductions under subparagraph (D)(ii), shall be made ratably on the basis of aggregate contributions made by such operators under the applicable 1988 coal wage agreements as of January 31, 1993.

(2) **1st plan year.** — In the case of the plan year of the Combined Fund beginning February 1, 1993 —

(A) the premiums under subsections (a)(1) and (a)(3) shall be 67 percent of such premiums without regard to this paragraph, and

(B) the premiums under subsection (a) shall be paid as provided in subsection (g).

(3) **Startup costs.** — The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall pay the costs of the Combined Fund incurred before February 1, 1993. For purposes of this section, such costs shall be treated as administrative expenses incurred for the plan year beginning February 1, 1993.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3042.)

**§ 9705. Transfers**

**(a) Transfer of assets from 1950 UMWA Pension Plan.—**

**(1) In general.**—From the funds reserved under paragraph (2), the board of trustees of the 1950 UMWA Pension Plan shall transfer to the Combined Fund—

(A) $70,000,000 on February 1, 1993,

(B) $70,000,000 on October 1, 1993, and

(C) $70,000,000 on October 1, 1994.

**(2) Reservation.**—Immediately upon the enactment date, the board of trustees of the 1950 UMWA Pension Plan shall segregate $210,000,000 from the general assets of the plan. Such funds shall be held in the plan until disbursed pursuant to paragraph (1). Any interest on such funds shall be deposited into the general assets of the 1950 UMWA Pension Plan.

**(3) Use of funds.**—Amounts transferred to the Combined Fund under paragraph (1) shall—

**(A)** in the case of the transfer on February 1, 1993, be used to proportionately reduce the premium of each assigned operator under section 9704(a) for the plan year of the Fund beginning February 1, 1993, and

(B) in the case of any other such transfer, be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) and the death benefit premium under section 9704(a)(2) of each assigned operator for the plan year in which transferred and for any subsequent plan year in which such funds remain available.

Such funds may not be used to pay any amounts required to be paid by the 1988 agreement operators under section 9704(i)(1)(B).

(4) **Tax treatment; validity of transfer.** —

(A) **No deduction.** — No deduction shall be allowed under this title with respect to any transfer pursuant to paragraph (1), but such transfer shall not adversely affect the deductibility (under applicable provisions of this title) of contributions previously made by employers, or amounts hereafter contributed by employers, to the 1950 UMWA Pension Plan, the 1950 UMWA Benefit Plan, the 1974 UMWA Pension Plan, the 1974 UMWA Benefit Plan, the 1992 UMWA Benefit Plan, or the Combined Fund.

(B) **Other tax provisions.** — Any transfer pursuant to paragraph (1) —

(i) shall not be treated as an employer reversion from a qualified plan for purposes of section 4980, and

(ii) shall not be includible in the gross income of any employer maintaining the 1950 UMWA Pension Plan.

(5) **Treatment of transfer.** — Any transfer pursuant to paragraph (1) shall not be deemed to violate, or to be prohibited by, any provision of law, or to cause the settlors, joint board of trustees, employers or any related person to incur or be subject to liability, taxes, fines, or penalties of any kind whatsoever.

(b) **Transfers from abandoned mine reclamation fund.** —

(1) **In general.** — The Combined Fund shall include any amount transferred to the Fund under section 402(h) of the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1232(h)).

(2) **Use of funds.** — Any amount transferred under paragraph (1) for any fiscal year shall be used to proportionately reduce the unassigned beneficiary premium under section 9704(a)(3) of each assigned operator for the plan year in which transferred.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3046.)

**§ 9706. Assignment of eligible beneficiaries**

(a) **In general.** — For purposes of this chapter, the Secretary of Health and Human Services shall, before October 1, 1993, assign each coal industry retiree who is an eligible beneficiary to a signatory operator which (or any related person with respect to which) remains in business in the following order:

(1) First, to the signatory operator which —

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry for at least 2 years.

(2) Second, if the retiree is not assigned under paragraph (1), to the signatory operator which —

(A) was a signatory to the 1978 coal wage agreement or any subsequent coal wage agreement, and

(B) was the most recent signatory operator to employ the coal industry retiree in the coal industry.

(3) Third, if the retiree is not assigned under paragraph (1) or (2), to the signatory operator which employed the coal industry retiree in the coal industry for a longer period of time than any other signatory operator prior to the effective date of the 1978 coal wage agreement.

(b) **Rules relating to employment and reassignment upon purchase.** — For purposes of subsection (a) —

(1) **Aggregation Rules.** —

(A) **Related person.** — Any employment of a coal industry retiree in the coal industry by a

signatory operator shall be treated as employment by any related persons to such operator.

(B) **Certain employment disregarded.** —Employment with —

(i) a person which is (and all related persons with respect to which are) no longer in business, or

(ii) a person during a period during which such person was not a signatory to a coal wage agreement,

shall not be taken into account.

(2) **Reassignment upon purchase.** — If a person becomes a successor of an assigned operator after the enactment date, the assigned operator may transfer the assignment of an eligible beneficiary under subsection (a) to such successor, and such successor shall be treated as the assigned operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the assigned operator transferring such assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. An assigned operator shall notify the trustees of the Combined Fund of any transfer described in this paragraph.

(c) **Identification of eligible beneficiaries.** — The 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan shall, by the later of October 1, 1992, or the twentieth day after the enactment date, provide to the

Secretary of Health and Human Services a list of the names and social security account numbers of each eligible beneficiary, including each deceased eligible beneficiary if any other individual is an eligible beneficiary by reason of a relationship to such deceased eligible beneficiary. In addition, the plans shall provide, where ascertainable from plan records, the names of all persons described in subsection (a) with respect to any eligible beneficiary or deceased eligible beneficiary.

**(d) Cooperation by other agencies and persons. —**

**(1) Cooperation.** — The head of any department, agency, or instrumentality of the United States shall cooperate fully and promptly with the Secretary of Health and Human Services in providing information which will enable the Secretary to carry out his responsibilities under this section.

**(2) Providing of information —**

**(A) In general.** — Notwithstanding any other provision of law, including section 6103, the head of any other agency, department, or instrumentality shall, upon receiving a written request from the Secretary of Health and Human Services in connection with this section, cause a search to be made of the files and records maintained by such agency, department, or instrumentality with a view to determining whether the information requested is contained in such files or records. The Secretary shall be advised whether the search disclosed the information requested, and, if so, such information

shall be promptly transmitted to the Secretary, except that if the disclosure of any requested information would contravene national policy or security interests of the United States, or the confidentiality of census data, the information shall not be transmitted and the Secretary shall be so advised.

(B) **Limitation.** — Any information provided under subparagraph (A) shall be limited to information necessary for the Secretary to carry out his duties under this section.

(3) **Trustees.** — The trustees of the Combined Fund, the 1950 UMWA Benefit Plan, the 1974 UMWA Benefit Plan, the 1950 UMWA Pension Plan, and the 1974 UMWA Pension Plan shall fully and promptly cooperate with the Secretary in furnishing, or assisting the Secretary to obtain, any information the Secretary needs to carry out the Secretary's responsibilities under this section.

**(e) Notice by Secretary.** —

(1) **Notice to fund.** — The Secretary of Health and Human Services shall advise the trustees of the Combined Fund of the name of each person identified under this section as an assigned operator, and the names and social security account numbers of eligible beneficiaries with respect to whom he is identified.

(2) **Other notice.**—The Secretary of Health and Human Services shall notify each assigned operator of the names and social security account numbers of eligible beneficiaries who have been assigned to such person under this section and a brief summary of the facts related to the basis for such assignments.

(f) **Reconsideration by Secretary.**—

(1) **In general.**—Any assigned operator receiving a notice under subsection (e)(2) with respect to an eligible beneficiary may, within 30 days of receipt of such notice, request from the Secretary of Health and Human Services detailed information as to the work history of the beneficiary and the basis of the assignment.

(2) **Review.**—An assigned operator may, within 30 days of receipt of the information under paragraph (1), request review of the assignment. The Secretary of Health and Human Services shall conduct such review if the Secretary finds the operator provided evidence with the request constituting a prima facie case of error.

(3) **Results of review.**—

(A) **Error.**—If the Secretary of Health and Human Services determines under a review under paragraph (2) that an assignment was in error—

(i) the Secretary shall notify the assigned operator and the trustees of the Combined

Fund and the trustees shall reduce the premiums of the operator under section 9704 by (or if there are no such premiums, repay) all premiums paid under section 9704 with respect to the eligible beneficiary, and

(ii) the Secretary shall review the beneficiary's record for reassignment under subsection (a).

(B) **No error.** — If the Secretary of Health and Human Services determines under a review conducted under paragraph (2) that no error occurred, the Secretary shall notify the assigned operator.

(4) **Determinations.** — Any determination by the Secretary of Health and Human Services under paragraph (2) or (3) shall be final.

(5) **Payment pending review.** — An assigned operator shall pay the premiums under section 9704 pending review by the Secretary of Health and Human Services or by a court under this subsection.

(6) **Private actions.** — Nothing in this section shall preclude the right of any person to bring a separate civil action against another person for responsibility for assigned premiums, notwithstanding any prior decision by the Secretary.

(g) **Confidentiality of information.** — Any person to which information is provided by the Secretary of Health and Human Services under this section shall not

disclose such information except in any proceedings related to this section. Any civil or criminal penalty which is applicable to an unauthorized disclosure under section 6103 shall apply to any unauthorized disclosure under this section.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3047.)

## PART III — ENFORCEMENT

Sec.
9707. Failure to pay premium.

### § 9707. Failure to pay premium

(a) **General rule.** — There is hereby imposed a penalty on the failure of any assigned operator to pay any premium required to be paid under section 9704 with respect to any eligible beneficiary.

(b) **Amount of penalty.** — The amount of the penalty imposed by subsection (a) on any failure with respect to any eligible beneficiary shall be $100 per day in the noncompliance period with respect to any such failure.

(c) **Noncompliance period.** — For purposes of this section, the term ''noncompliance period'' means, with respect to any failure to pay any premum or installment thereof, the period —

(1) beginning on the due date for such premium or installment, and

(2) ending on the date of payment of such premium or installment.

**(d) Limitations on amount of penalty.** —

**(1) In general.** — No penalty shall be imposed by subsection (a) on any failure during any period for which it is established to the satisfaction of the Secretary of the Treasury that none of the persons responsible for such failure knew, or exercising reasonable diligence, would have known, that such failure existed.

**(2) Corrections.** — No penalty shall be imposed by subsection (a) on any failure if —

**(A)** such failure was due to reasonable cause and not to willful neglect, and

**(B)** such failure is corrected during the 30-day period beginning on the 1st date that any of the persons responsible for such failure knew, or exercising reasonable diligence would have known, that such failure existed.

**(3) Waiver.** — In the case of a failure that is due to reasonable cause and not to willful neglect, the Secretary of the Treasury may waive all or part of the penalty imposed by subsection (a) for failures to the extent that the Secretary determines, in his sole discretion, that the payment of such penalty would be excessive relative to the failure involved.

(e) **Liability for penalty.** — The person failing to meet the requirements of section 9704 shall be liable for the penalty imposed by subsection (a).

(f) **Treatment.** — For purposes of this title, the penalty imposed by this section shall be treated in the same manner as the tax imposed by section 4980B.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3050.)

## PART IV — OTHER PROVISIONS

Sec.
9708. Effect on pending claims or obligations.

### § 9708. Effect on pending claims or obligations

All liability for contributions to the Combined Fund that arises on and after February 1, 1993, shall be determined exclusively under this chapter, including all liability for contributions to the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan for coal production on and after February 1, 1993. However, nothing in this chapter is intended to have any effect on any claims or obligations arising in connection with the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of February 1, 1993, including claims or obligations based on the "evergreen" clause found in the language of the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan. This chapter shall not be construed to affect any rights of subrogation of any 1988 agreement operator with respect to contributions due to the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan as of February 1, 1993.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3051.)

## SUBCHAPTER C — HEALTH BENEFITS OF CERTAIN MINERS

Part
I. Individual employer plans.
II. 1992 UMWA benefit plan.

## PART I — INDIVIDUAL EMPLOYER PLANS

Sec.
9711. Continued obligations of individual employer plans.

### § 9711. Continued obligations of individual employer plans

**(a) Coverage of current recipients.** — The last signatory operator of any individual who, as of February 1, 1993, is receiving retiree health benefits from an individual employer plan maintained pursuant to a 1978 or subsequent coal wage agreement shall continue to provide health benefits coverage to such individual and the individual's eligible beneficiaries which is substantially the same as (and subject to all the limitations of) the coverage provided by such plan as of January 1, 1992. Such coverage shall continue to be provided for as long as the last signatory operator (and any related person) remains in business.

**(b) Coverage of eligible recipients.** —

**(1) In general.** — The last signatory operator of any individual who, as of February 1, 1993, is not receiving retiree health benefits under the individual employer plan maintained by the last signatory operator pursuant to a 1978 or subsequent coal

wage agreement, but has met the age and service requirements for eligibility to receive benefits under such plan as of such date, shall, at such time as such individual becomes eligible to receive benefits under such plan, provide health benefits coverage to such individual and the individual's eligible beneficiaries which is described in paragraph (2). This paragraph shall not apply to any individual who retired from the coal industry after September 30, 1994, or any eligible beneficiary of such individual.

(2) **Coverage.** — Subject to the provisions of subsection (d), health benefits coverage is described in this paragraph if it is substantially the same as (and subject to all the limitations of) the coverage provided by the individual employer plan as of January 1, 1992. Such coverage shall continue for as long as the last signatory operator (and any related person) remains in business.

(c) **Joint and several liability of related persons.** — Each related person of a last signatory operator to which subsection (a) or (b) applies shall be jointly and severally liable with the last signatory operator for the provision of health care coverage described in subsection (a) or (b).

(d) **Managed care and cost containment.** — The last signatory operator shall not be treated as failing to meet the requirements of subsection (a) or (b) if benefits are provided to eligible beneficiaries under managed care and cost containment rules and procedures described in section 9712(c) or agreed to by the last signatory operator and the United Mine Workers of America.

(e) **Treatment of noncovered employees.** — The existence, level, and duration of benefits provided to former employees of a last signatory operator (and their eligible beneficiaries) who are not otherwise covered by this chapter and who are (or were) covered by a coal wage agreement shall only be determined by, and shall be subject to, collective bargaining, lawful unilateral action, or other applicable law.

(f) **Eligible beneficiary.** — For purposes of this section, the term ''eligible beneficiary'' means any individual who is eligible for health benefits under a plan described in subsection (a) or (b) by reason of the individual's relationship with the retiree described in such subsection (or to an individual who, based on service and employment history at the time of death, would have been so described but for such death).

(g) **Rules applicable to this part and part II.** — For purposes of this part and part II —

(1) **Successor.** — The term ''last signatory operator'' shall include a successor in interest of such operator.

(2) **Reassignment upon purchase.** — If a person becomes a successor of a last signatory operator after the enactment date, the last signatory operator may transfer any liability of such operator under this chapter with respect to an eligible beneficiary to such successor, and such successor shall be treated as the last signatory operator with respect to such eligible beneficiary for purposes of this chapter. Notwithstanding the preceding sentence, the last signatory operator transferring such

assignment (and any related person) shall remain the guarantor of the benefits provided to the eligible beneficiary under this chapter. A last signatory operator shall notify the trustees of the 1992 UMWA Benefit Plan of any transfer described in this paragraph.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3051.)

## PART II — 1992 UMWA BENEFIT PLAN

Sec.
9712. Establishment and coverage of 1992 UMWA Benefit Plan.

### § 9712. Establishment and coverage of 1992 UMWA Benefit Plan.

**(a) Creation of plan.** —

**(1) In general.** — As soon as practicable after the enactment date, the settlors shall create a separate private plan which shall be known as the United Mine Workers of America 1992 Benefit Plan. For purposes of this title, the 1992 UMWA Benefit Plan shall be treated as an organization exempt from taxation under section 501(a). The settlors shall be responsible for designing the structure, administration and terms of the 1992 UMWA Benefit Plan, and for appointment and removal of the members of the board of trustees. The board of trustees shall initially consist of five members and shall thereunder be the number set by the settlors.

(2) **Treatment of plan.** — The 1992 UMWA Benefit Plan shall be —

(A) a plan described in section 302(c)(5) of the Labor Management Relations Act, 1947 (29 U.S.C. 186(c)(5)),

(B) an employee welfare benefit plan within the meaning of section 3(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1002(1)), and

(C) a multiemployer plan within the meaning of section 3(37) of such Act (29 U.S.C. 1002(37)).

(b) **Coverage requirement.** —

(1) **In general.** — The 1992 UMWA Benefit Plan shall only provide health benefits coverage to any eligible beneficiary who is not eligible for benefits under the Combined Fund and shall not provide such coverage to any other individual.

(2) **Eligible beneficiary.** — For purposes of this section, the term "eligible beneficiary" means an individual who —

(A) but for the enactment of this chapter, would be eligible to receive benefits from the 1950 UMWA Benefit Plan or the 1974 UMWA Benefit Plan, based upon age and service earned as of February 1, 1993; or

**(B)** with respect to whom coverage is required to be provided under section 9711, but who does not receive such coverage from the applicable last signatory operator or any related person,

and any individual who is eligible for benefits by reason of a relationship to an individual described in subparagraph (A) or (B). In no event shall the 1992 UMWA Benefit Plan provide health benefits coverage to any eligible beneficiary who is a coal industry retiree who retired from the coal industry after September 30, 1994, or any beneficiary of such individual.

**(c) Health benefits.** —

**(1) In general.** — The 1992 UMWA Benefit Plan shall provide health care benefits coverage to each eligible beneficiary which is substantially the same as (and subject to all the limitations of) coverage provided under the 1950 UMWA Benefit Plan and the 1974 UMWA Benefit Plan as of January 1, 1992.

**(2) Managed care.** — The 1992 UMWA Benefit Plan shall develop managed care and cost containment rules which shall be applicable to the payment of benefits under this subsection. Application of such rules shall not cause the plan to be treated as failing to meet the requirements of this subsection. Such rules shall preserve freedom of choice while reinforcing managed care network use by allowing a point of service decision as to whether a network medical provider will be used. Major elements of such rules may include, but are not limited to, elements described in paragraph (3).

(3) **Major elements of rules.** — Elements described in this paragraph are —

(A) implementing formulary for drugs and subjecting the prescription program to a rigorous review of appropriate use,

(B) obtaining a unit price discount in exchange for patient volume and preferred provider status with the amount of the potential discount varying by geographic region,

(C) limiting the benefit payments to physicians to the allowable charge under title XVIII of the Social Security Act, while protecting beneficiaries from balance billing by providers,

(D) utilizing, in the claims payment function ''appropriateness of service'' protocols under title XVIII of the Social Security Act if more stringent,

(E) creating mandatory utilization review (UR) procedures, but placing the responsibility to follow such procedures on the physician or hospital, not the beneficiaries,

(F) selecting the most efficient physicians and state-of-the-art utilization management techniques, including ambulatory care techniques, for medical services delivered by the managed care network, and

(G) utilizing a managed care network provider system, as practiced in the health care industry, at the time medical services are needed (point-of-service) in order to receive maximum benefits available under this subsection.

(4) **Last signatory operators.** — The board of trustees of the 1992 UMWA Benefit Plan shall permit any last signatory operator required to maintain an individual employer plan under section 9711 to utilize the managed care and cost containment rules and programs developed under this subsection if the operator elects to do so.

(5) **Standards of quality.** — Any managed care system or cost containment adopted by the board of trustees of the 1992 UMWA Benefit Plan or by a last signatory operator may not be implemented unless it is approved by, and meets the standards of quality adopted by, a medical peer review panel, which has been established —

(A) by the settlors, or

(B) by the United Mine Workers of America and last signatory operator or group of operators.

Standards of quality shall include accessibility to medical care, taking into account that accessibility requirements may differ depending on the nature of the medical need.

**(d) Guarantee of benefits.—**

**(1) In general.**—All 1988 last signatory operators shall be responsible for financing the benefits described in subsection (c), in accordance with contribution requirements established in the 1992 UMWA Benefit Plan. Such contribution requirements, which shall be appled uniformly to each 1988 last signatory operator, on the basis of the number of eligible and potentially eligible beneficiaries attributable to each operator, shall include:

**(A)** the payment of an annual prefunding premium for all eligible and potentially eligible beneficiaries attributable to a 1988 last signatory operator,

**(B)** the payment of a monthly per beneficiary premium by each 1988 last signatory operator for each eligible beneficiary of such operator who is described in subsection (b)(2) and who is receiving benefits under the 1992 UMWA Benefits Plan, and

**(C)** the provision of security (in the form of a bond, letter of credit or cash escrow) in an amount equal to a portion of the projected future cost to the 1992 UMWA Benefit Plan of providing health benefits for eligible and potentially eligible beneficiaries attributable to the 1988 last signatory operator. If a 1988 last signatory operator is unable to provide the security required, the 1992 UMWA Benefit Plan shall require the operator to pay an annual

prefunding premium that is greater than the premium otherwise applicable.

(2) **Adjustments.** — The 1992 UMWA Benefit Plan shall provide for —

(A) annual adjustments of the per beneficiary premium to cover changes in the cost of providing benefits to eligible beneficiaries, and

(B) adjustments as necessary to the annual prefunding premium to reflect changes in the cost of providing benefits to eligible beneficiaries for whom per beneficiary premiums are not paid.

(3) **Additional liability.** — Any last signatory operator who is not a 1988 last signatory operator shall pay the monthly per beneficiary premium under paragraph (1)(B) for each eligible beneficiary described in such paragraph attributable to that operator.

(4) **Joint and several liability.** — A 1988 last signatory operator or last signatory operator described in paragraph (3), and any related person to any such operator, shall be jointly and severally liable with such operator for any amount required to be paid by such operator under this section.

(5) **Deductibility.** — Any premium required by this section shall be deductible without regard to any limitation on deductibility based on the prefunding of health benefits.

(6) **1988 last signatory operator.**—For purposes of this section, the term ''1988 last signatory operator'' means a last signatory operator which is a 1988 agreement operator.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3053.)

## SUBCHAPTER D—OTHER PROVISIONS

Sec.
9721. Civil enforcement.
9722. Sham transactions.

### § 9721. Civil enforcement

The provisions of section 4301 of the Employee Retirement Income Security Act of 1974 shall apply to any claim arising out of an obligation to pay any amount required to be paid by this chapter in the same manner as any claim arising out of an obligation to pay withdrawal liability under subtitle E of title IV of such Act. For purposes of the preceding sentence, a signatory operator and related persons shall be treated in the same manner as employers.

(Added Pub. L. 102-486, Title XIX, § 19143(a), Oct. 24, 1992, 106 Stat. 3055.)